

CALIFORNIA COASTAL COMMISSION

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Staff:	MJW-SC
Staff Report:	10/17/02
Hearing Date:	11/07/02

STAFF REPORT: APPEAL

SUBSTANTIAL ISSUE DETERMINATION

APPEAL NUMBER:	A-3-PSB-02-076, Pinheiro
LOCAL GOVERNMENT:	City of Pismo Beach
DECISION:	Approved with conditions, 06/25/02
APPLICANT:	Frank & Arlene Pinheiro
APPELLANTS:	Frank Bertotti
PROJECT LOCATION:	374 Boeker (Shell Beach Planning Area), Pismo Beach (San Luis Obispo County) APN 010-311-051.
PROJECT DESCRIPTION:	Construction of a 3,336 square foot single-family residence on a 6,4150 square foot blufftop lot.
FILE DOCUMENTS:	City of Pismo Beach Certified Local Coastal Program; Final Local Action Notice 3-PSB-02-432; City of Pismo Beach City Council Resolution No. R-02-50.
RECOMMENDATION:	No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that **NO** substantial issue exists with respect to the grounds on which the appeal has been filed. Staff has determined that the action on a Coastal Development Permit (01-0251) and variance does not raise a substantial issue regarding conformance with the standards set forth in the City of Pismo Beach Certified Local Coastal Program, which includes the Shell Beach Area Plan.



California Coastal Commission
November 7, 2002 Meeting in San Diego

Staff: M. Watson Approved by:

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The City's action allows for the construction of a two-story, 3,336 square foot single family residence. The project is located within the Coastal Zone in the Shell Beach planning area of the City of Pismo Beach, San Luis Obispo County (project vicinity and site location maps are shown in Exhibits 1 and 2, respectively). The property (APN 010-311-051) is located at 374 Boeker. The parcel fronts the Pacific Ocean and has a north-south facing orientation.

The appellant contends that the project does not comply with the City of Pismo Beach Local Coastal Program (LCP) because the project:

- Is not harmonious with the character of the surrounding neighborhood.
- Is not adequately setback from the blufftop;
- Did not require an emergency services easement;
- Is a recorded archeological site;
- Improperly identified the edge of blufftop.

These contentions do not raise a substantial issue because the proposed project is in conformance with the Shell Beach Area Plan and policies(p. LU28–LU30) for development of single family residences in the Coastal Zone, as well as the certified zoning ordinance Sections 17.018, 17.078.050, and 17.121.030. Specifically, the project meets LCP bluff setback requirements, has been designed consistent with LCP height & design standards, and includes appropriate mitigation to address the potential existence of cultural resources.

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Exhibits

1. Vicinity Maps
2. Site Location Map
3. Site Plans, Elevations & Model
4. Appellant's Contentions
5. San Luis Obispo County Findings and Conditions of Approval
6. Site Photos

1. LOCAL GOVERNMENT ACTION

The City of Pismo Beach Planning Commission approved a coastal development permit for the subject development in on June 25, 2002, subject to 10 conditions and 2 mitigation measures. This action was appealed to the City Council by Frank Bertotti on July 9, 2002. The Planning Commission action was upheld and the appeal was denied on August 6, 2002 by a vote of 4 to 0 with one Council member absent.

2. APPEAL PROCEDURES

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea and is within 300' of the coastal bluff.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and is within 300' of the coastal bluff.



3. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed, pursuant to Coastal Act Section 30603.

MOTION: *I move that the Commission determine that Appeal No. A-3-PSB-02-076 raises a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-PSB-02-076 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

4. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Location and Description

The project is located at 374 Boeker in the City of Pismo Beach within the Shell Beach Planning Area, San Luis Obispo County (Exhibit 2). The LCP zoning designates the project area as Single Family Residential.

The project involves the construction of 3,336 square foot single-family residence on a 6,150 square foot vacant blufftop lot at the end of Boeker. The existence of a public sewer main running through the property, limit the developable area at this location compared to that of similar sized lots in the neighborhood. Because of this constraint, the applicant applied for and was granted a variance from the second floor, floor area allowance. Additionally, the LCP calls for a public pedestrian pathway at this location. The City approval was conditioned to require a dedication of an easement eight feet wide for public access purposes. Copies of the project plans are attached to this report as Exhibit 3.



B. Substantial Issue Analysis

The appellant contends that the project does not comply with the City of Pismo Beach Local Coastal Program because it is not compatible with the character of the surrounding neighborhood, is not adequately setback from the blufftop, did not require an emergency services vehicle easement, is a known archeological site, and improperly identified the bluff edge (see Exhibit 4 for text of appellants' contentions). As discussed below, the approved project does not raise a substantial issue in regards to the LCP's Land Use Plan and Zoning Ordinance policies.

1. Community Character

Appellant Contentions

With regard to community character, the appellant contends that the project does not comply with the scale, bulk, and character of the surrounding neighborhood structures. In particular, the appellant contends that the City approval exceeds the limitations placed on second floor, floor size. Additionally, the appellant takes issue with the height of the fireplace stacks. The appeal asserts that the City has not appropriately applied its standards to protect the unique character of the community. The appellant states:

The rooftop, fireplace stack, and gables are not compatible with the scale, bulk, and character of the existing neighborhood.

Relevant LCP Policies

The LCP standards applicable to this contention can be found in the Shell Beach Planning Area section of the LUP and the certified Zoning Ordinance of the City of Pismo Beach LCP.

Section LU-H-4 – Residential Guidelines: *a. Scale of Structures. New development should be designed to reflect the small scale image of Shell Beach rather than large monolithic buildings. Buildings should be designed with vertical, horizontal, and roof articulations of building faces. Where two-story buildings are proposed, the second story should normally be stepped back.*

Section 17.102 General Provisions: Building Heights, Yard, Area, Coverage, and Construction Requirements. *Building heights shall be as follows: 1. Residential: no structures in the A-E, R-1, R-2, or M-H zones shall exceed 25 feet in height as measured above the center of the building footprint at site grade...*

6. Exceeding Height Limits: (R-1, R-2, R-3, P-R, and M-H zones): Television antennas, fire place chimneys and roof mounted solar collectors not exceeding an aggregate of six feet by six feet in dimension may exceed height limits by a maximum of 5 feet.



Section 17.105.135: Development and Design Standards Applicable to Single-Family Dwellings in Certain Zones. *The following additional development and design standards shall be applicable to the development, enlargement, or alteration of single-family dwellings in the R-1, R-2, R-3, R-4, and R-R zones, except for the Pismo Heights Planning Area as defined in the Pismo Beach General Plan / Local Coastal Plan:*

(1) *To avoid “boxy” structures that have unrelieved exterior wall planes extending in height for two or more stories and to promote vertical articulation of wall planes, the amount of gross floor area on any second floor shall not exceed eighty (80) percent of the amount of gross floor area on the ground floor. Any “stepbacks” of the second floor living area from the building footprint on the ground level shall be required to be provided at least in part on the street-side of the house unless infeasible.*

Analysis and Conclusion

The proposed project site is located at the end of Boeker Street on the coastal bluff. There are currently one-story and two-story residences on Boeker Street both large and small, though as one gets closer to the ocean, the houses tend to be larger. All along Shell Beach the blufftop residences are much larger than the homes further landward in the subdivision. As noted above, the proposed residence would be fairly large at 3,336 square feet, but not unlike many of the existing residences along the bluff. The proposed house is designed at 25 feet and has two chimney elements that are all within the standards of coastal zoning ordinance sections 17.102(1) and 17.102(6). What differentiates this project from others in this neighborhood are the constraints on the lot. The City's sewer main traverses the western third of the lot and as such, the applicant is required to convey a public utility easement over this area and cannot place permanent structures in the easement area. As a result, the amount of buildable area on the lot has been reduced. In response, the applicant incorporated a redesign of the structure that has a second story element, which is 80.5% the size of the ground-level floor area.

The policies and ordinances cited above provide the standards for new development proposed for areas designated Single Family Residential in Shell Beach and were addressed in the course of the City's coastal development permit deliberations. As proposed and approved, the development proposal exceeds the standard requiring second stories to be no larger than 80% of the ground level. The City made a finding for a variance approving a second story element that was 80.5% or 8 square feet greater than the rule. The City's permitting procedures allows for variances from the structural development standards if, because of special circumstances, the strict application of the zoning ordinance would deprive the subject property of development potential available to other properties in the vicinity. While it may be argued whether the constraints on the lot are sufficient for the City to approve a variance which is specifically reserved for unusual hardships derived from strict application of the standards, the difference of 8 square feet simply does not rise to a level of significance with regard to LCP conformance. Therefore, the Commission finds no substantial issue.



2. Bluff Setbacks

Appellant Contentions

With regard to the prescribed bluff setbacks, the appellant contends that the approved project did not adequately require bluff setbacks to the proposed house, sewer main, and pedestrian path. Additionally, the appellant argues that the approval did not include an emergency services vehicle easement or properly identify the edge of bluff and is therefore, inconsistent with certified LCP's bluff setback policies.

Relevant LCP Policies

The LCP standards applicable to this contention can be found in the Shell Beach Planning Area section of the LUP and the certified Zoning Ordinance of the City of Pismo Beach LCP.

LU-H-5 Bluff Setback and Protection: *Development along the bluffs shall be set back a minimum of 25 feet or greater from the top of the bluff. Geology reports to determine bluff retreat shall be required for any development near the top of the bluff to ensure that adequate bluff setbacks and protective measures area provided.*

LU-H-9 Lateral Access at Boeker Street: *The City should pursue opportunities to create lateral pedestrian pathways connecting Boeker Street to Placentia Avenue or Ocean Boulevard to the north and to Windward Avenue or Ocean Boulevard to the south. This requirement shall be implemented as part of project approval, private gifts or dedications or possibly through public acquisition.*

S-3 Bluff Setbacks: *All structures shall be set back a safe distance from the top of the bluff in order to retain the structures for a minimum of 100 years, and to neither create nor contribute significantly to erosion, geologic instability or destruction of the site or require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The City shall determine the required setback based on the following criteria:

(a) *For development on single family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff...*

17.078.050 Bluff Hazard, Erosion, and Bluff Retreat Criteria and Standards: **1.** *New structures shall be set back a sufficient distance from the bluff edge to the safe from the threat of bluff erosion for a minimum of 100 years. (a) For development on single family residential lots subdivided prior to January 23, 1981, the minimum bluff setback shall be 25 feet from the top of the bluff...*



Analysis and Conclusion

The proposed development is located at the end of Boeker Street on a coastal blufftop lot. A geologic investigation was submitted for the proposed development at this location. The investigation and subsequent peer review evaluated historical bluff conditions and established the current edge of bluff. Staff's analysis of the geologic reports concurs that the bluff edge was adequately defined. Based on the site-specific geologic evidence, the amount of bluff retreat over the next 100 years is estimated at approximately 17 feet. The estimate is less than the minimum 25 foot bluff setback for development called for in the City's LCP. The City approval, however, required a 30'+ bluff setback for the proposed single-family structure -more than 5' greater than the 25' minimum required setback. The additional setback was required to accommodate a public utility easement for existing utilities and future undergrounding of all utilities at the site.

Consistent with the land use plan requirement for a lateral access easement, the approval also required an 8' wide public lateral access easement at this location. The easement will be approximately 17' from the top of the bluff. Although the LCP is silent on the siting of the easement, one could conclude from the policy language that *all* development would need to be at least 25 feet from the bluff edge. The City approval includes improvements to the easement such as installing a decomposed granite path and removing a portion of stone walls at both ends of the property to "open" access to the path. Though within the required 25' minimum bluff setback, development of the public access route was required to be setback beyond the 100-year erosion/bluff retreat line. As noted in the site-specific geologist report, the underlying bluff materials are made of erosion resistant rock, volcanic in nature. The resultant 100-year setback was based on an estimated rate of erosion of 2" per year for the exposed rock at this location.

Clearly, the intent of the LCP policies are to ensure that structures be adequately setback from the bluff edge to ensure a useful life of 100-years. In order to accomplish that goal, the LCP provides additional guidance by requiring all development to be setback a minimum of 25' and possibly more based on site-specific geologic evidence. In this case, the approved house is more than adequately setback, however, the lateral public access easement does not meet the LCP 25' bluff setback standard. This does not raise a substantial issue in this instance for several reasons, the first being the site-specific evidence provided by the applicant demonstrating bluff stability at this location. The bluff is mainly comprised of erosion resistant materials that can withstand many years of erosive forces. Based on the site-specific erosion analysis, the required public access improvements will not be threatened by erosion for approximately 120 years. Secondly, the slight slope to the site creates a natural separation for the placement of the accessway. There are a series of small benches or steps leading out towards the bluff edge at this location. The alignment of the required access improvements corresponds with the first break in topography along the bluff and would provide additional privacy for the homeowners and a better pathway experience for the public. Third, in the event that bluff retreat threatens the lateral public access at this location, the bluff path could be realigned landward of its current proposed position. The ability to relocate the easement is facilitated by the presence of the public utility easement, which is currently 30'+ from the existing edge of bluff.



Finally, the appellant contends that the City approval did not include an easement for ingress and egress of emergency service vehicles. Staff notes that the proposal represents infill on a blufftop lot for which there is no need for emergency services seaward of the proposed home. Adequate emergency access is available from Boeker Street and Ocean Boulevard to the north.

Thus, though the proposed bluff setback for a public access easement would not be technically consistent with the LCP policy standards for a 25' minimum bluff setback at this location, the proposal includes a 100-year setback and therefore does not rise to a level of significance for the reasons discussed above. The main structure is adequately setback, the bluff edge has been properly defined and there is no LCP requirement for an emergency services vehicle easement at this location. Therefore, these concerns do not raise a substantial issue in terms of the project's conformance with the certified LCP's bluff setback policies.

3. Archeological Resources

Appellant Contentions

The appellant contends that the project is located within a known recorded archeological site and that additional studies are required to "map" the resources.

Relevant LCP Policies

Chapter 17.063 of the certified zoning ordinance provides standards and guidance to preserve, protect, and maintain sites, which have significant historical, archeological, or cultural importance.

17.063.020 Criteria and Standards. 2. *An archeological surface survey of each site shall be conducted by a qualified archeologist as a condition of development review for any proposed project within the Archaeology–Historic Sites Overlay Zone in areas of known significance based upon a written determination of the Public Services Department. The results of this survey shall be submitted as a part of the development application. Included with this survey will be an evaluation as to the presence of cultural resources based on supportable evidence and shall also include appropriate mitigation measures, as necessary, for the project. Any site which is surveyed pursuant to the requirements of this ordinance shall not be required to be further surveyed unless specified by the findings of the survey.*

Analysis and Conclusion

The entire project area as well as several lots in the neighborhood are located within a large recorded prehistoric site. The prehistoric site was recorded in 1970 and has been determined to be the location of a Chumash Indian village. Many of these lots have been developed with single family residences. Different parts of this site contain the "full range of cultural materials" according to the archeologist who performed the surface survey as required by the LCP. Because the proposed project is located within a recorded archeological site and has the potential to harm prehistoric cultural materials, an environmental initial study was completed and mitigation measure proposed which require further testing and follow-up actions during grading. These mitigation measures are included in the conditions of the City approval for this project. The Conditions require subsurface testing of the project site after



the project receives planning approvals and at the owner's expense/risk. If the additional surveys conclude that the site contains unique archeological resources and that the project will have an adverse impact on those resources, the resources must be protected and impacts mitigated as described in Public Resources Code 21083.2. Mitigation measures may include revisions to project design, granting of a permanent easement over the resource area, capping or covering the site, or offering to sell or give the project site to a governmental or non-profit agency that will preserve and protect the resource. See the Exhibit 5 for the conditions of approval. These requirements satisfy LCP standards for protecting and preserving historical, cultural, and archeological resources. Therefore, no substantial issue is raised.

